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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

DENNIS C. VACCO, ATTORNEY GENERAL OF THE STATE OF NEW YORK, *et al.*,
Petitioners,

—v.—

TIMOTHY E. QUILL, M.D., *et al.*,
Respondents,

and

STATE OF WASHINGTON, *et al.*,
Petitioners,

—v.—

HAROLD GLUCKSBERG, M.D., *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS
FOR THE SECOND AND NINTH CIRCUITS

BRIEF FOR THE INSTITUTE FOR PUBLIC AFFAIRS OF THE UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA ("UOJCA") AND THE RABBINICAL COUNCIL OF AMERICA, AS *AMICI CURIAE*, IN SUPPORT OF PETITIONERS

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INTRODUCTION AND INTEREST OF *AMICI*

This case raises the question whether individuals throughout the United States will be granted a right protected by the United States Constitution to seek and receive assistance in committing suicide. The courts below, on differing grounds, held that the states of New York and Washington could not proscribe assisting another person to commit suicide. *Quill v. Vacco*, 80 F.3d 716 (2nd Cir. 1996); *Compassion in Dying v. State of Washington*, 79 F.3d 790 (9th Cir. 1996).

Amici believe that these appellate courts have misread precedents handed down by this Court in recent years and have invented a "right to die" not contemplated by any provision of our Constitution.

The Union of Orthodox Jewish Congregations of America (the "UOJCA") is a non-profit synagogue umbrella organization for over 1,000 Jewish congregations throughout the United States. It is the largest Orthodox Jewish umbrella organization in North America. Through its Institute for Public Affairs, the UOJCA researches and advocates the legal and public policy positions promoted by the Orthodox Jewish community. The UOJCA has joined in filing briefs with this Court in many of the important cases which affect the Jewish community and American society at large. *See, e.g., Bd. of Ed. of Kiryas Joel v. Grumet*, 114 S.Ct. 2481 (1994); *Zobrest v. Catalina Foothills Sch. Dist.*, 113 S.Ct. 2462 (1993).

The Rabbinical Council of America is the sister organization of the UOJCA serving as the largest rabbinical organization in the world with a membership in excess of 1,000 rabbis.

We are supporting the petitioners in this case because we believe that the invention of a

constitutionally protected "right to die" is at odds with the language, history, policies, and sound judicial understanding of the Fourteenth Amendment of our Constitution.

We have obtained the consent of the parties in each action to file this brief. We acknowledge that the opinions of the lower courts and the briefs of the parties to this case have raised many of the arguments which this Court must consider in rendering its decision herein. *Amici* offer this brief to the Court with the purpose of clarifying the position of the Orthodox Jewish community and, importantly, the position of traditional Jewish teaching with regard to this issue. We believe this is particularly important in this case because the lower courts (the Ninth Circuit in particular) have purported to discuss the approach of ancient and historical traditions to assisted suicide.

SUMMARY OF ARGUMENT

1. The Court should reverse the holding of the Court of Appeals for the Ninth Circuit. This Court has clearly established that those rights deemed to be "fundamental" and thus protected by the Due Process Clause of the Fourteenth Amendment are those which are either implicit in our concept of ordered liberty or deeply rooted in this nation's traditions and history. A right to physician assisted suicide is neither. As demonstrated by the Court of Appeals for the Second Circuit in its discussion of this issue, such a right is clearly not implicit in our concept of ordered liberty. As *amici* demonstrate in this brief, to the degree that our nation's traditions and history are derived from our Judeo-Christian heritage, it is clear that this right cannot be said to enjoy such a pedigree either. The Jewish tradition clearly prohibits the active assistance of suicide. Moreover, in inventing a new "right to die," the Ninth Circuit ignored this Court's clear admonitions against expanding the list of fundamental rights extrapolated from the Due Process Clause. The Ninth Circuit also misread this Court's holdings in *Planned Parenthood v. Casey* and *Cruzan v. Director, Missouri Dept. of Health* to elicit this new fundamental right. Neither of those cases, properly read, provide a basis for the Ninth Circuit's recognition of a constitutionally protected "right to die."

2. The Court should reverse the holding of the Court of Appeals for the Second Circuit. First, the State of New York has not (nor has the State of Washington) established a classification scheme which treats similarly situated terminally ill persons differently. In fact, New York has not created a classification scheme with regard to terminally ill persons altogether, for its ban on assisting suicide applies to the healthy and the ill equally. Second, even assuming that New York has created such a classification scheme, it is rationally related to a host of state interests – most notably, the state's interest in ensuring that the value of every human life is respected -- and thus is constitutional under the Equal Protection Clause of the Fourteenth Amendment.

ARGUMENT

I. THE SUBSTANTIVE COMPONENT OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT DOES NOT CONTEMPLATE A FUNDAMENTAL LIBERTY TO PHYSICIAN ASSISTED SUICIDE.

A. THE "RIGHT TO DIE" IS NEITHER IMPLICIT IN THE CONCEPT OF ORDERED LIBERTY, NOR DEEPLY ROOTED IN THIS NATIONS TRADITIONS AND HISTORY

The list of fundamental rights or liberty interests protected by the Fourteenth Amendment's Due Process Clause is short and well defined. Fundamental rights have been recognized in connection with child rearing, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), family relationships, *Prince v. Mass.*, 321 U.S. 158 (1944), procreation, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), and the decision as to whether or not to beget or bear a child, *Loving v. Virginia*, 388 U.S. 1 (1967); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Roe v. Wade*, 410 U.S. 113 (1973).

Moreover, this Court has warned that it will offer "great resistance" to attempts to expand that list. *Bowers v. Hardwick*, 478 U.S. 186, 195 (1986). The Court in *Bowers* stated that "announcing rights not readily identifiable in the Constitution's text involves much more than the imposition of the Justices' own choice of values." *Id.*, at 191. Instead, this Court must proceed on the basis of criteria set forth in its earlier seminal decisions. It must find that the suggested right is "implicit in the concept of ordered liberty" such that "neither liberty nor justice would exist if it were sacrificed," *Palko v. Connecticut*, 302 U.S. 319, 325 (1937), or that the suggested right is a liberty "deeply rooted in this nation's history and tradition." *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977)(opinion of Powell, J.).

Accord., Bowers, 478 U.S. at 191-192.

In the context of these cases, even the Court of Appeals for the Second Circuit, which struck down New York's ban on physician assisted suicide on equal protection grounds, rejected the suggestion that such a fundamental right or liberty interest was to be newly created under the Due Process Clause. The *Quill* court held that this contended right "cannot be considered so implicit in our understanding of ordered liberty" and succinctly concluded that the "right to assisted suicide finds no cognizable basis in the Constitution's language or design," 80 F.3d at 724.

The Second Circuit also recognized that this suggested right is not deeply rooted in this nation's traditions and history. The court noted the prohibition of assisted suicide under the Common Law of England. *Amici* here offer for the Court's consideration the position of the Jewish legal tradition in its role as one of the central roots of this nation's legal structure.

It is well recognized that many of the laws of this nation are rooted in moral traditions brought to this country by her first settlers. Those moral traditions are derived from a familiar set of moral strands woven together in what has come to be referred to as our common Judeo-Christian heritage. It is well recognized that "if all laws representing essentially moral choices are to be invalidated under the Due Process Clause, the courts will be very busy indeed." *Bowers v. Hardwick*, 478 U.S. 186, 196 (1986). *Amici* are in no way suggesting that these cases ought to be decided by this Court on the basis of religious teaching. We are contending, however, that the Judeo-Christian rejection of physician assisted suicide informs us that it is not a fundamental right to be accorded constitutional protection.

The approach to treatment of the terminally ill in traditional Jewish sources is one which venerates the infinite value of human life. Judaism not only recognizes the inestimable value

of each life, but of every moment of that life as well. Thus, one may violate the sabbath to free an individual from a collapsed building even if it is clear that the person will only survive a short time. Code of Jewish Law (I:329:4), *cited in* J.D. Bleich, *Treatment of the Terminally Ill*, Tradition, A Journal of Orthodox Jewish Thought (30:3) at 52 (hereinafter, Bleich).

Under traditional Jewish law, the preservation of life outweighs virtually every other religious commandment.[1] Thus, for example, one should violate the sabbath or eat non-kosher foods in order to save a life. Although Jewish tradition does not champion asceticism or suffering, it does recognize that "life with suffering is, in many cases, preferable to cessation of life and with it the elimination of suffering." Bleich, at 52. Thus, the rabbinic commentary to Genesis (9:5)[2] notes that the Bible seemingly repetitiously prohibits fratricide after having already condemned homicide because of a recognition that in certain circumstances the taking of a life might be wrongly perceived as motivated by love or compassion; it is precisely in those cases, the Bible instructs us, that such an act still constitutes murder. *See* Bleich, at 53. While Judaism recognizes personal autonomy and freedom as religious values, it has also long recognized that they are values which are not paramount to all others.

The traditional Jewish position goes so far as to say that one ought not take any action that might actively hasten

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[1] One must sacrifice his own life in the face of violating any of the three cardinal sins: murder, idolatry or adultery. Even in those circumstances, however, under Jewish law the individual is to permit himself to be killed by his adversary, not sacrifice his own life. Thus, the Ninth Circuit's reliance upon the events at Masada, 79 F.3d at 807 fn.24, is misplaced for there the Jews may not have followed the principles of Jewish law by killing themselves. *See*, F. Rosner, Modern Medicine and Jewish Ethics (1986), at 252 *et. seq.*

[2] "But your blood of your lives I will require; from the hand of every beast will I require it; and from the hand of man, from the hand of a person's brother, will I require the life of man."

the death of the terminally ill person. *See* Talmud, Tractate Shabbat, 151b.[3] Nevertheless, it does carve out an extremely narrow exception for an individual who is deemed to be in the "throes of death." A person in such a state is essentially defined as one who is irreversibly certain to die within seventy-two hours. Bleich, at 64, fn. 24. In such limited circumstances, Jewish law permits those treating the patient to withdraw treatment so that death may occur naturally.[4] While there is great debate in Jewish legal sources over the application of these principles it is clear that nothing may be done to actively speed the death process. *See* F. Rosner, *Jewish Perspectives on Issues of Death and Dying*, 11 Journal of Halacha and Contemporary Society, 50 (1986).

Despite these clear principles – the mandate of *Bowers* and the clarity that this "right" is neither implicit in our understanding of ordered liberty nor rooted in our nation's traditions -- the Court of Appeals for the Ninth Circuit felt compelled to invent a new fundamental liberty interest, the right to die, under the Due Process Clause by a patchwork reading of this Court's precedents. The holding of the Ninth Circuit must be rejected for several reasons.

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[3] One must not move the patient in a way that might hasten death, "the matter is like a flickering flame; as soon as one touches it, the light is extinguished."

[4] Thus, Jewish law recognizes the dichotomy between the active assistance of suicide and the passive withholding of treatment such that death results.

B. THIS COURT'S PRECEDENTS CLEARLY WARN AGAINST EXPANDING THE LIST OF ALREADY ESTABLISHED FUNDAMENTAL RIGHTS

This Court has warned lower courts not to discover new rights implicit in the Due Process Clause. In *Bowers* it clearly stated:

> Nor are we inclined to take a more expansive view of our authority to discover new fundamental rights imbedded in the Due Process Clause. The Court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution. That this is so was painfully demonstrated by the face-off between the Executive and the Court in the 1930's, which resulted in the repudiation of much of the substantive gloss that the Court had placed on the Due Process Clauses of the Fifth and Fourteenth Amendments. There should be, therefore, great resistance to expand the substantive reach of those Clauses, particularly if it requires redefining the category of rights deemed to be fundamental. Otherwise, the Judiciary necessarily takes to itself further authority to govern the country without express constitutional authority. The claimed right pressed on us today falls far short of overcoming this resistance.

Bowers, at 194-195. The Second Circuit followed this mandate while the Ninth Circuit ignored it. In its forty-eight page opinion, the Ninth Circuit devotes little more than two footnotes to *Bowers* and baldly asserts that the precedent neither controls nor is inconsistent with its conclusion. *Compassion In Dying*, 79 F.3d at 813 fn.65. Such disregard for the clear admonition of this Court is

troubling and telling; it (along with an inexplicable reliance on polling data to determine current societal attitudes toward suicide, *Id.*, at 810) suggests that the Ninth Circuit panel was sitting as a superlegislature, rather than as a court organized under our constitutional structure.

Respondents and their *amici* are, at bottom, pressing this Court to ignore its precedents which counsel resistance to expanding the category of fundamental rights. On this basis alone, the Court should rule in favor of petitioners.

In looking to justify the creation of this new liberty interest, the Ninth Circuit relied upon this Court's decision in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) which, after reviewing its previous decisions to grant constitutional protection for the fundamental rights of marriage, procreation, contraception, family relationships, child rearing, and education, stated, at 851:

> These matters involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, or meaning, of the universe, and of the mystery of human life.

The Ninth Circuit agreed with the district court that these sentences were "highly instructive" and "almost prescriptive" for creating a liberty interest in a person's choice to commit suicide. 79 F.3d at 813 (citations omitted).

It must be recognized that a majority of the justices in *Casey* indicated their belief that the underlying case of *Roe v. Wade* was either incorrectly decided or had sufficient doubts regarding its correctness to refrain from reaffirming it on its original (fundamental liberty) grounds. Rather, *Casey*'s majority was formed out of a need to respect the principles of *stare decisis*,

not the ringing reaffirmation of the fundamental right of more than twenty-years earlier. *See Casey*, 505 U.S. at 854. This makes *Casey* a most tenuous foundation for minting a new fundamental constitutional right. *See* Chopko, *Assisted Suicide: Still a Wonderful Life?*, 70 Notre Dame L. Rev. 519, 576 (1995).

As stated above, this Court has consistently resisted finding constitutionally protected liberty interests and has only done so after a careful and thorough analysis of the right in question. That being the case, it is inconceivable that a few passages found in *Casey* were intended by this Court as a springboard for courts to employ in the creation of new fundamental rights. That the Ninth Circuit believes so demonstrates how far it has strayed from this Court's precedents.[5]

The Ninth Circuit also based its holding upon *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990), in which this Court held that "a competent person has a protected liberty interest in refusing unwanted medical treatments" even where such a refusal will inevitably result in death. *Id.*, at 278. From that narrow statement, the Ninth Circuit conjured a broad right to "hastening one's own death." 79 F.3d at 816. Once again, the Ninth Circuit's reasoning is flawed. The liberty interest discussed in *Cruzan* was necessarily limited to the refusal of unwanted medical treatment. This is apparent form the Court's derivation of this liberty interest from the well established tort law doctrine of informed consent. By virtue of an individual's right to determine who may treat his own body, the Court derived a

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[5] Ironically, the Ninth Circuit's first opinion in this litigation, *Compassion In Dying v. Washington*, 49 F.3d 586, 590 (9th Cir. 1995), accurately characterized such an attempt to base the creation of a new fundamental right to die on these abstract passages. The court stated: "To take three sentences out of an opinion over thirty pages in length dealing with the highly charged subject of abortion and to find these sentences 'almost prescriptive' in ruling on a statute proscribing the promotion of suicide is to ... ignore the differences between regulation of reproduction and the prevention of the promotion of killing a patient at his or her request.

corollary right to refuse the treatment of that same body. *Id.*, at 269-270. It is a much greater leap, however, to then conclude that one may seek assistance in afflicting his own body.

Moreover, the *Cruzan* Court emphasized the narrowness of its holding:

> This is the first case in which we have been squarely presented with the issue whether the United States Constitution grants what is in common parlance referred to as a "right to die." We follow the judicious counsel of our decision in *Twin City Bank v. Nebeker*, 167 U.S. 196, 202 (1897), where we said that in deciding "a question of such magnitude and importance...it is the [better] part of wisdom not to attempt by any general statement to cover every possible phase of the subject.

497 U.S. at 277. Consequently, *Cruzan* ought to be read as limited solely to its factual context – the right to refuse unwanted medical treatment – and not to create a broader right to hasten one's own death.

II. THE PROHIBITION OF PHYSICIAN ASSISTED SUICIDE IS RATIONALLY RELATED TO LEGITIMATE STATE INTERESTS AND, THEREFORE, DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

Having demonstrated that there is no fundamental right to physician assisted suicide contained in the Fourteenth Amendment, we proceed to the review of this state legislation under the Equal Protection Clause of the Fourteenth Amendment. It was upon this basis that the Court of Appeals for the Second Circuit struck down New York's proscription of assisted suicide. The Second Circuit held that New York lacked a rational basis for treating differently, what it deemed to be, similarly situated classes of terminally ill persons.

A. THE STATES HAVE NOT LEGISLATED THE DISPARATE TREATMENT OF SIMILARLY SITUATED INDIVIDUALS

Prior to proceeding to a discussion of rational-basis review, however, a threshold issue must be raised. Central to any equal protection analysis, including that engaged in by the Second Circuit, is the treatment by the state of similarly situated individuals (or classes of individuals) differently. To embark upon its equal protection analysis, the Second Circuit interpolated the creation of two categories of terminally ill persons into the New York statutory scheme. Thus, after reviewing the principles of rational-basis review, the court asserted that:

> New York does not treat similarly circumstanced persons alike: those in the final stages of terminal illness who are on life support systems are allowed to hasten their deaths by directing the removal of such systems; but those who are similarly situated, except for the previous attachment of life-sustaining equipment, are not allowed to hasten death by self-administering

prescribed drugs.

80 F.3d at 729. What is overlooked by this reasoning, however, is that the statute prohibiting the assisting of suicide does not speak to the terminally ill alone. It is a provision of the Penal Law that is generally applicable to those who would assist in the suicide of a perfectly healthy individual just as much as one who is terminally ill.[6] *See*, N.Y. Penal Law 125.15, 120.30. Thus, it is inappropriate to read as one whole cloth of this generally applicable provision and the legislature's decision to permit the refusal of continued life-support, N.Y. Pub. Health Law 2980-94, or resuscitation, N.Y. Pub. Health Law 2960-79.[7]

It has long been recognized that legislatures may seek to address various issues which confront our society piecemeal and need not address all phases of an issue at once and still have its enactments survive equal protection review. *See Williamson v. Lee Optical*, 348 U.S. 483 (1955). Here, the State of New York determined years ago that giving assistance to suicide was to be prohibited. *See Quill*, 80 F.3d at 733 (opinion of Calabresi, J., concurring). The fact that in more recent years the legislature has determined to permit a narrow class of individuals – the terminally ill on life-support – to arrange for the discontinuation of the active sustaining of their lives or for ordering that medical professionals do not intervene and resuscitate them should the life support mechanisms fail, does not indicate that the legislature has created a classification scheme among the terminally ill or as between the terminally ill and all

[6] Indeed, one of the most troubling aspects of this case is that those who advocate for a constitutionally protected "right to die" do not convincingly address how this right will be restricted to those who are terminally ill and wish to "die with dignity" as opposed to others who may for whatever reason decide that they no longer wish to live. We address this point further below.

[7] It is similarly the case that Washington's statute struck down by the Ninth Circuit is a statute of general applicability contained in its penal code section. *See*, Wash Rev.Code 9A.36.060.

other citizens.

Thus, the Second Circuit erred in holding that the New York statute violated the Equal Protection Clause for irrationally classifying groups of terminally ill persons differently. In fact, New York's laws do not classify the terminally ill into different categories. Therefore, rational-basis review is inapplicable.

B. THE STATUTES AT ISSUE ARE RATIONALLY RELATED TO LEGITIMATE STATE INTERESTS

Even assuming that these statutes are to be read together to create a statutory classification scheme that treats similarly situated persons differently, such schemes still fulfill the requirements of the Equal Protection Clause as enunciated by this Court and are constitutional.

As noted by the *Quill* court below, "[t]he general rule... is that state legislation carries a presumption of validity if the statutory classification is 'rationally related to a legitimate state interest.' *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440 (1985)." 80 F.3d at 725. Left unmentioned by the *Quill* panel was this Court's restatement of the principles underlying rational-basis review as succinctly summarized in *Heller v. Doe By Doe*, 113 S.Ct. 2637, 2642 (1993). There, this Court reaffirmed the fact that:

> rational-basis review in equal protection analysis is not a license for courts to judge the wisdom, fairness, or logic of legislative choices...[n]or does it authorize the judiciary to sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines. For these reasons, a classification neither involving fundamental rights nor proceeding along suspect

> lines is accorded a strong presumption of validity. Such a classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. Further, a legislature that creates these categories need not actually articulate at any time the purpose or rationale supporting its classification. Instead, *a classification must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification...moreover...the burden is on the one attacking the legislative arrangement to negate* [sic] *every conceivable basis which might support it.*

Id. at 2642-2643 (internal quotes and citations omitted, emphasis supplied).

A host of rational legislative policy determinations underlie the decisions by these states to prohibit physician assisted suicide. In fact, many of these state interests and policy decisions are outlined, albeit rejected, by the majority opinion for the Ninth Circuit, 70 F.3d 816-831, and by the dissent filed in that case. *Id.* at 851-855. Those state interests include: (1) a state's interest in preserving life as recognized by this Court in *Cruzan*, 497 U.S. at 282; (2) a state's interest in preventing suicide; (3) a state's interest in assuring that third parties do not persuade persons contemplating suicide to do so; (4) a state's interest in safeguarding the well-being and interests of those close to the person who commits suicide; (5) a state's interest in protecting the integrity of and reliability upon the medical profession as one persons may seek reliable assistance.

Amici would note for the Court on this occasion one central and compelling state interest and policy that should alone compel the rejection of respondents' cause. Proponents of

protecting the practice of physician assisted suicide, especially as a fundamental right protected by the Constitution, consistently point to the importance of respecting the autonomous decision-making power of the individual. Taken to its logical conclusion, however, such a policy provides no reasonable rationale why this choice should be provided only to the terminally ill. It is illogical to suggest that any other class of citizens may be prohibited from exercising this choice if it is granted to the terminally ill.[8]

Some will suggest that society ought to grant this choice of suicide only to the terminally ill out of respect for their unique plight and that the host of state interests identified heretofore continue to apply to the able-bodied among us. This is the very sort of decision which our constitutional structure confers upon the legislative branch, not the courts. In this context, the legislatures have determined that such an option ought not to be granted to the terminally ill for they recognize that "[s]ingling out the terminally ill as a class of people who 'deserve' to have their suicidal impulses respected...is logically incoherent unless one presupposes that, in some objective sense, their live[s are] not worth living. But, as a civilized society, we make no such claim with respect to any human being." Chopko, *Assisted Suicide*, 70 Notre Dame L.Rev. at 576.

The ancient lineage, outlined above, of the approach to the terminally ill found in traditional Jewish sources has made its way into our society's laws by way of its common Judeo-Christian heritage. While "[a]ncient lineage of a legal concept does not give it immunity from attack for lacking a rational basis," this Court has recognized that the very fact "[t]hat the law has long treated the classes as distinct...suggests that there is a commonsense distinction between [the two categories at issue.

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[8] The Ninth Circuit approvingly relied on this point in its first review of Washington's statute. 49 F.3d at 590-591 ([under this reasoning there is nothing to prevent] "the depressed twenty-one year old, the romantically devastated twenty-eight year old, [or] the alcoholic forty-year old" from also claiming a fundamental right to die.).

Heller, 113 S.Ct. at 2646. Thus, these laws of the State of New York and the State of Washington must be found to survive rational-basis review.

CONCLUSION

In its opinion below, the *Quill* court wondered "what interest can the state possibly have in requiring the prolongation of a life that is all but ended?" 80 F.3d at 729. The detached, doctrinal answer is that under a rational basis review it is the legislatures and not our courts which are to make such a determination. The more appropriate answer, and the one which *amici* ask this Court to resoundingly affirm, is that our nation, and its living Constitution, venerates and cherishes the value of every human life as our ancient traditions have for centuries.

For the foregoing reasons, the judgments of the Courts of Appeals should be reversed with instructions to enter judgments for the defendants.

Respectfully submitted,

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